

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 115 of 1992
in

Company Petition No. 72/91
with
Misc.Application No. 6/92

Company Application No. 201/96
with
Misc. Application No. 31/95

Company Application No. 210/95
with
Misc. Application No. 37/91

Company Application No. 202/96
with
Company Application No. 203/96
with

Misc. Application No. 38/91

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes
2. To be referred to the Reporter or not? yes
3. Whether Their Lordships wish to see the fair copy
of the judgement? No
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?
No

OFFICIAL LIQUIDATOR

Versus

MANAGER

Appearance: in Comp.Appln. No. 115/92

OFFICIAL LIQUIDATOR for Petitioner
SERVED for Respondent No. 1
MR DS VASAVADA for Respondent No. 2
MR HV CHHATRAPATI for Respondent No. 3, 4, 5, 6

OJMCA No.37/91
IRBI vs OL of OMEXX INVESTORS

Mr. A.C.Gandhi for IRBI
Official Liquidator for No.
No.2 served.

OJMCA/38/91

IRBI vs New Guj.Synthetics

Mr.A.C.Gandhi for IRBI
Official Liquidator for No.1
Notice not received back for 2 and 3
Mr. S.M. Singhi for no.4.
No. 5 Served.

OJMCA/6/92 in Coma/94/92

IFCI vs. Amruta Mills

Mr. HV Chhatrapati for 1-2 IFCI
Offl.Liquidator for resp.No.1.
Mr. R.M.Desai for no.2
Mr. SM.Singhvi for no.3
Mr. A.C.Gandhi for nos 4 and 5

COMA/201/96

OFFICIAL LIQUIDATOR FOR NO.1

OL of Nutan Mills vs Bank of Baroda

Official Liquidator for no.1
Served respondents 1-3-6

Singhi & Buch Asso. 4 and 5

OJCMA 31/91 in Comp/64/93

IRBI vs Nutan Mills

Mr. S.M.Singhi for applicant
Official Liquidator for No.1
Served by RPAD for no.2
Served 3-4 6-8-12

Mr. RM.Desai for 5 and 7

COMA No. 203/96

OL New Guj.Synthetics vs. SBI

OL for applicant
RM Desai for Respondent no.1
Served respondents 2-5
Mr.AC Gandhi for respondent no.3
Respondent no.4 served by RPAD

COMA No. 202/96

OL of New Guj. Synthetics vs. SBI
OL for applicant
Mr. RM.Desai for respondent no.1
Served 2-5
Mr.AC Gandhi for no.3
No.4 served by RPAD

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 12/03/97

JUDGEMENT

The Company Application in all these matters are filed by the Official Liquidator (O.L) seeking permission of this court to sell the properties of the companies which have gone in liquidation and to get the directions regarding the sale of the said properties; where as the Misc. Applications Nos. 6/92, 31/95. 37/91 and 38/91 are filed by one of the secured creditors of the company which are ordered to be wound up in order to get the order of this court to allow them to sell the properties in order to recover their outstanding dues. As common questions of facts and law are involved in all these

matters, all these matters are being considered and disposed of with the consent of the parties by this common judgment.

Company Appln.no. 115/92 and Misc. Appln.No. 6/92

2. Company Application No. 115/92 is filed by the O.L. who has been appointed to take possession of the properties belonging to Amruta Mills Ltd. In Company petition No.72/91, an order of winding up of the said Amruta Mill was passed on 22.11.91. The O.L. has filed this Company Application No. 115/92 seeking directions from this court to sell the property of which he has taken possession and to get direction as regards the manner in which the sale is to be effected. In this application he has shown all the secured creditors of the said company as respondents along with the Textile Labour Association (TLA) as respondent. One of the said secured creditors is Industrial Finance Corporation of India (IFCI)

3. Said secured creditor of Amruta Mill, IFCI has filed this Misc. Application No. 6/92 titling it as an application u/s 30 of the Industrial Finance Corporation of India Act 1948. It is the claim of the applicant IFCI that Amruta Mill Ltd.had applied for a term loan of Rs. 38.75 lacs, and term loan of Rs. 50 lacs out of the term loan of Rs. 250 lacs and Rs. 29 lacs out of term loan of Rs. 172 lacs and all the necessary documents for the loan agreement were executed on 17.11.80. It is further the claim of the applicant IFCI that said company had also created a mortgage by depositing the title deeds and had also executed deed of hypothecation and other security document in favour of the applicant. The further claim of the applicant is that the applicant has to recover an amount of Rs. 1,38,10,453/- which were due on 15.6.92 and further interest on the said amount and costs. It is the claim of the petitioner that the petitioner had obtained leave under section 446 of the Companies Act in Company Application No. 151/92 on 8.7.92 and therefore, the applicant is seeking orders of sale of the properties of Amruta Mills Ltd. which were mortgaged and hypothecated with the applicant under the provisions of section 30 of the Industrial Finance Corporation of India Act 1948. (IFCI Act).

Company Appln.No. 201/96 with Misc. Appln.No. 31/95

4. Company Application No. 210/96 is filed by the OL seeking permission of this court to sell the properties belonging to Nutan Mills Ltd. which has gone

in liquidation as per the order passed by this court in Company Petition No. 64/93 on 6.7.93.

5. Misc. Application no. 31/95 is filed by one of the secured creditors which were shown by the OL in Company Application No. 201/96 viz. Industrial Reconstruction Bank of India (IRBI) purporting to be an application u/s 40 of the Industrial Reconstruction Bank of India Act 1984. It is the claim of the applicant that by letter dated 3.12.86 Nutan Mills had asked for a term loan of Rs. 74 lacs and the said request was granted and a loan of Rs. 74 lacs was sanctioned as per the loan agreement dated 12.2.87. Said amount was to be repaid in 12 half yearly installments commencing from 20.6.88 and ending on 20.12.93 with an agreement to pay 11.5 percent interest and damages of 2 percent per annum for the period of default. It is the case of the applicant that said company had also executed deed of hypothecation as well as deed of mortgage and had furnished other documents by way of securities. It is the claim of the applicant that said company owes to the applicant an amount of Rs. 1,63,27,167/- as on 15.11.95 and further interest and costs and for that purpose the properties belonging to the said company may be allowed to be sold by the applicant by exercising the powers under section 40 of the Industrial Reconstruction Bank of India Act 1984.

Company Appln.No. 210/96 with Misc.Appln.No. 37/91

6. Company Application No. 210/96 is filed by the OL. showing the State Bank of India, IRBI and TLA as opponent. The OL is seeking a permission of this court to sell the property and he further wants a direction regarding the sale of the property belonging to Omax Instores Ltd. which has gone in liquidation as per the order of winding up passed 6.3.90 in company petition no.156/90.

7. Misc. Application No. 37/91 is filed by the IRBI purporting to be an application under section 40 of the Industrial Reconstruction Bank of India Act (IRBI Act). It is the claim of the applicant that said company which has gone on liquidation has taken a term loan of Rs. 200 lacs and had executed deeds of hypothecation, mortgage and other security bonds in favour of the applicant. It is the claim of the applicant that applicant's dues are of Rs. 3,09,20,829/- and future interest and costs. Therefore the applicant seeks the order of this court to sell the property of the company

in liquidation under the provisions of section 40 of IRBI Act.

Company Applns.Nos.202/96 & 203/96

8. These Company Applications nos. 202 and 203 of 1996 are filed by the OL and in both the applications SBI, IDBI, IRBI, ICICI and TLA are shown as five respondents. Company Application No. 202/90 is pertaining to New Gujarat Synthetics Mills Ltd. (No.2); whereas Company Application No.. 203/96 is pertaining to New Gujarat Synthetics Mills Ltd. (No.1). The two companies viz.New Gujarat Synthetics Mills Ltd. (No.1) and New Gujarat Synthetics Mills Ltd. (No.2) have gone in liquidation as per the order of winding up passed in Company Petition No. 107/89 and Company Petition No.. 10/86 ion 1.9.89. The O.L. is seeking permission of this court to sell the property of the said companies and a direction regarding the sale.

9. Misc. Application no. 38/91 is filed by the IRBI purporting to be an application under section 40 of the IRBI Act. It is the claim of the applicant that these two companies were initially one company viz. New Gujarat Synthetics Mill Ltd. and the said original company had taken a term loan of Rs. 400 lacs and they owe an amount of Rs. 2,14,03,441/- to the applicant on account of the said term loan. Towards the said term loan said company had executed deeds of hypothecation and other security bonds in favourof the applicant. The applicant therefore, seeks an order of sale under the provisions of section 40 of the Industrial Reconstruction Bank of India Act 1984.

10. The applicant in Misc. Application no. 6/92 is represented by Sr.,Advocate Mr. B.H.Chatrapati. It is his contention that the sale which he is seeking is u/s 30 and therefore, he alone is entitled to sell the property. It is also his contention that no Sale Committee should be appointed to sell the property and other secured creditors as well as the OL and the TLA are not entitled to participate in the Sale Committee. The applicants in Misc. Applications no. 31/95, 37/91 and 38/91 is represented by Mr. Singhi He also contends that the sale which he is seeking in these proceedings is a sale under section 40 and therefore, neither the OL nor TLA are entitled to participate in the said proceedings and he has no objection to appoint a Sale Committee for selling the property but according to him the representatives of TLA should not be a member of the Sale

Committee.

11. All the other secured creditors viz.SBI, PunjabNational bank. IDBI, ICICI have no objection for selling the property through the Sale Committee but they also do not want that that the TLA to be a member of the Sale Committee.

12. I will first deal with Misc. Application No. 6/92 before considering the claim of the applicant that his application is u/s 30 of the IFCI Act 1948 and he alone is entitled to sell the property . For considering this aspect it is necessary to mention certain salient facts and circumstances. There is no dispute of the fact that Amruta Mill which has gone in liquidation had taken a loan from the applicant and for that purpose , mortgage of immoveable property and hypothecation of moveable properties were created in favour of the applicant but it is also an admitted fact that said company Amruta Mill is ordered to be wound up by the order dated 22.11.91 in Company Petition No. 72/91. Present Misc. Application no. 6/92 is filed by the applicant on 20.7.92. Thus this application of the applicant has come before this court after the order of winding up of the said company is passed.

13. In the light of the admitted facts viz. that order of winding up of the said debtor company has been passed on 22.11.91 and the applicant has filed the present application no. 20.7.92, provisions of subsection 12 of section 30 will have to be considered. Subsection 12 of section 30 of the IFCI Act is running as under:

" Nothing in this section shall be construed, where proceedings for liquidation in respect of the industrial concern have commenced before an application is made under subsection (1) as giving to the Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law."

The relief sought by the applicant of sale is under subsection 1 of section 30 of the IFCI Act 1948. If the above provisions of sub section 12 of section 30 are taken into consideration in the back ground of the fact that the applicant cannot claim any preference over the other creditors-secured as well as unsecured creditors of the Amruta Mills Ltd. No doubt the applicant is a secured creditor and secured creditor can join the proceedings if the company has gone in liquidation before

the Company Court or he can remain out of the proceedings before the Company Court in order to realise his dues by liquidating his securities and he can proceed with a proceeding Suit) by remaining out of liquidation proceedings or he can obtain that relief from the court which has passed the order of liquidation by proving his debt.. But the company can seek order of sale from the court under S. 30(1) of the said Act of 1948 and the sale of the property is to be carried out as far as practicable under the provisions of Code of Civil Procedure. That is quite clear from provisions of section 30(10) which runs as under:

" 30(10) An order of attachment or sale of the property under this section shall be carried into effect as far as may be practicable in the manner provided in the Code of Civil Procedure 1908 for attached or sale of property in execution of a decree as if the Corporation were the decree holder"

14. In Misc. Applications nos. 31/95, 37/91 and 38/91 the applicant is IRBI. In all these three applications it is the claim of the applicant that the sale of the property of the company which has been wound up should be effected under the provision of section 40 of the IRBI Act 1984. Misc. Application No. 31/95 is filed in respect of the company- Nutan Mills Ltd. Said application is filed on 25.10.95. But said company Nutan Mills is ordered to be wound up by the order dated 6.7.93 in company petition no. 64/93. In Misc. Application No. 37/91 and 38/91 applicants have sought for the permission to sell the property of Omex Interstores and New Gujarat Synthetics Mills Ltd. The company Omex Interstores Ltd. has gone in liquidation as per the order of winding up on 6.3.90 in Company Petition No. 156 of 1990 whereas Misc. Application No. 37/91 is filed on 8.2.91. New Gujarat Synthetics Mills Ltd. (No.1) and (2) are liquidated by the order of winding up passed on 1.9.89 in Company Petition no. 10/86 whereas Misc. Application is filed on 1.2.91. Therefore it is quite obvious that the both these applications are filed after the order of winding up passed by the Company Court. Thus all these three applications viz. Misc. Applications nos. 31/95, 37/91 and 38/91 are filed by IRBI in respect of the companies which are already gone in liquidation by the order of winding up passed by the Company Court. If the provisions of sub section 13 of section 40 of the IRBI Act 1984 are considered then it

would be quite clear that the applicant in these 3 applications cannot claim any preference over the other creditors- secured as well as unsecured when they have filed these applications after the order of winding up is passed. Said sub section 13 of section 40 is running as under:

" Nothing in this section shall be construed, where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under subsection (1) as giving to the Reconstruction Bank any preference over the other creditors of the industrial concern not conferred on it by way other law. "

15. The Misc. Applications No.6/92, 31/95, 37/ 91 and 38/91 are applications under section 40(1) of the IRBI Act for sale. The sale of the property of the company is to be effected as far as practicable under the provisions of the Code of Civil Procedure. That is quite clear from the following provisions of sub section 10 of section 40 of IRBI Act 1984:

"40(10) An order of attachment or sale of property under this Section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure 1908 for attachment and sale of property in the execution of a decree as if the Reconstruction Bank was a decree holder"

16. Thus these four Misc. Applications Nos. 6/92, 31/95, 37/91 and 38/91 are filed by the secured creditors under the special Acts but said applications are filed by them after the companies which are their debtors, have gone in liquidation on account of the passing of the order of winding up and the possession of the property was also taken over by the OL. The Misc. Applications are no doubt of secured creditors and they are entitled to remain out of the liquidation proceedings and they can have right to proceed against their securities in order to recover their dues. But for that purpose, in view of the provisions of the special Act under which they have come ought to have taken recourse to the specific provisions in order to get priority over other creditors before passing of orders of winding up of these companies. Thus I hold that all these four Misc. Applications seeking relief under the special Acts are tenable, but the applicants cannot claim any

preferential rights over other creditors of these companies.

17. However, all the applicants will have to produce all the material to satisfy this court as what are the dues of each of the applicants against the debtor company on their producing that material the amount of sale proceeds would be distributed among all the secured creditors and the workers of mills. But in view of the fact that the mill companies are closed down and winding up orders are passed long back, I hold that in the interest of all the parties I should proceed to effect the sales of the properties.

18. Now the applicants in Misc. Applications nos. 6/91m, 31/91, 37/91 and 38/91 are also seeking sale of the property of the company in liquidation and the OL has also filed Company Applications nos. 115/92, 211/96, 210/96, 202/96 and 203/96 for getting one and the same relief. There is no dispute between these applicants before me as well as the other secured creditors which are shown as respondents in those applications on the point that the property of the companies which have gone in liquidation are to be sold. But it is contended before me that the properties need not be sold by this court through the Sale Committee particularly by Mr. Chatrapati learned advocate for the applicant in Misc. Application No. 6/92. Other applicants as well as secured creditors have not objected for selling the property through sale committee. They have got the only objection that representative of TLA should not be a member of the sale committee.

19. It is vehemently urged before me by Mr. Chhatrapati that neither the Companies Act nor the CPC provides for the sale of the properties of the company through a Sale Committee. He also submitted before me that even the IFCI Act also does not provide for appointment of a Sale Committee. It is true that there is no specific provision either in the CPC or in the IFCI Act or in IRBI Act or Companies Act specifically providing for appointing/creating the Sale Committee for the sale of the property. But at the same time the Companies Court Rules 1959 pertaining to the sale by the OL there are rules at sr. nos 272, 273 and 274. Out of them rule 273 is running as under:

" Procedure at sale:- Every sale shall be held by the Official Liquidator, or, if the Judge shall so direct, by an agent or an auctioner approved by the Court, and subject to such terms and conditions, if any, as may be approved by the

Court. All sales shall be made by public auction or by inviting sealed tenders or in such manners as the Judge may direct."

Now if the provisions of Rule 273 is considered then it will be clear that ordinarily the sale of the property in a liquidation proceedings is to be held by the OL but it also empowers the Company Court Judge to issue directions to have a sale agent or Sale Committee. A Sale Committee is a creation of the courts. The Sale Committee is appointed by the Court with a view to see that interest of the secured creditors as well as the laborers and unsecured creditors is fully protected and achieved. The Sale Committee is appointed in order to see that maximum possible price for the property to be sold is received. There is another purpose in appointing the Sale Committee and that is to avoid making allegations against the sole individual whether OL or single agent who is directed to sell the property and to avoid investigation of the allegations against such sale persons. Generally representatives of the secured creditors are taken on the Sale Committee with a view to see that property which they were either hypothecated or mortgaged fetches proper and good value so as to see that their dues are fully recovered. Thus appointment of Sale Committee is always in the interest of all persons who are interested in securing their dues and it is also in the interest of the company which has gone in liquidation. There could not be any legal objections for an appointment because it could not be said that by appointing of Sale Committee any prejudice is caused to any of the secured creditors or anybody else. It must be also mentioned here that in fact the control for the sale is of the court and unless the court accepts the final bid and confirms the sale effected by the Sale Committee, the sale will not be effective.

20. As stated earlier, the Sale Committees are appointed by the Courts by its order. When the Sale Committee is appointed or created by the order of the court, it is the privilege and prerogative of the court to select the members of the Sale Committee. Because it is a sale by the Court under Code of Civil Procedure. No doubt it will be open for the party to contend that the person who is nominated or appointed by the court is disqualified either by his own conduct or on account of the statutory provisions from being the members of the Sale Committee. Generally when the court appoints a Sale Committee, the court gives representation to all the secured creditors of the company in the said Sale

Committee and it also gives the representation to TLA for participation on the said Sale Committee. The OL is also included in the sale Committee because he happens to be technically in possession of the property to be sold and he is to give possession as well as title to the purchaser. The secured creditors are objecting to giving nomination to the representatives of the TLA in the Sale Committee. It is their contention that when the OL is there, then the representative of TLA need not be taken in the Sale Committee and for that purpose they put reliance on the section 529(1) of the Companies Act.

"S.529. Application of insolvency rules in winding up of insolvent companies. (1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to-

(a) debts provable.

(be) the valuation of annuities and future and contingent liabilities;

(c) the respective rights of secured and unsecured creditors, as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent

Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security:

(a) the liquidator shall be entitled to represent the workman and enforce such charge;

(be) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues and;

(c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security whichever is less, shall rank pari passu with the workmen's dues for the purpose of

section 529A"

(emphasis supplied)

Now if the above provisions are taken into consideration, then it would be quite clear that clause (a) of the proviso to subsection 1 of section 529 lays down that where secured creditors instead of relinquishing his security and proving his debt, opts to realise his security, the liquidator shall be entitled to represent the workman and enforce their charge which is declared as a pari passu charge by the proviso. Now if that proviso is considered then it would be quite clear the representative of the workmen by the OL is in case of a sale carried out by secured creditors by not coming before the court in a liquidation proceeding. It is always open for the secured creditors to either join the liquidation proceedings without surrendering his security by proving his debt and he can also remain out of the liquidation proceedings and to proceed to liquidate his securities by taking an independent proceedings. But when the secured creditor comes before the court and without relinquishing his security proves his debt and asks to realise his securities then in that case it could not be said that the liquidator shall be entitled to represent the workman. But the representation of the Official Liquidator created by section 529 is for the purpose of proving the charge of workers' and to make recovery. Here I am not considering the charge of the workmen or the question of recovering their dues. Here I am proceeding to sell the property of the debtor. Hence in this proceeding there could be representation of the workmen by the Official Liquidator.

21. Therefore, in my opinion there could not be any objection for allowing the representative of the TLA to be a member of the Sale Committee even if there happens to be OL in the Sale Committee..

22. No doubt the learned advocate for the applicant in Misc . Application no. 6/92 cited before me the decision of the learned single Judge of this Court in Company Petition No. 157/95 in Company Petition No. 39/92 in Company Petition No. 157/89 in the case of State bank of India vs. OL of Aryoday Gng. & Mfg. Co.Ltd. decided on 27.11.96 and has put reliance on the following observations:

"It is a settled legal position which does not require any elaboration that a secured creditor

who is remaining outside the winding up proceedings can get his securities sold so that he can be paid from the sale proceeds. By virtue of provision of section 529 and section 529A of the Companies Act, even the workmen will get workmen's portion as calculated as per the said provisions if all the securities are disposed of.

Looking to the fact that the Official Liquidator has also to represent the workman, I do not think it necessary to permit a representative of the workman to participate in the proceedings which might have to be initiated for selling the securities."

22. If the above observations are considered then it would be quite clear that in that case also the learned single Judge does not say that representative of workmen could not be a member of the Sale Committee. Then he also cited before me the decision of the Division Bench of this Court in the case of GSFC vs. Himalay Tools Pvt.Ltd. in Company Petition No.16/91 decided on 7.10.94. Now in that case also the Gujarat State Financial Corporation and Bank of Maharashtra were the secured creditors of the company M/s Himalay Tools Pvt.Ltd. had already taken over possession of the the company and had sold the same to another company after receiving certain amount and thereafter the OL has filed a Company Application No.. 36/90 seeking an order of the court to ask said secured creditors to hand over the sale proceeds of the property transferred to the third party and to deliver possession of the remaining propriety of the company which had gone in liquidation and that claim of the OL though was allowed by the Company Judge, the same is rejected by the Division Bench by allowing that appeal. Therefore, on facts the said case will not be applicable to the facts of the case before me.

23. Thus I hold that it is the discretion of the court as to who should be the members of the Sale Committee and it is also the discretion of the court as to whether the property is to be sold through the Sale Committee or not.

24. I therefore hold that in Misc. Application no.6/92 the sale of the propriety of Amruta Mill Ltd.is to be effected through the Sale Committee which would constitute of the OL, and the representatives of the five

creditors and representative of the TLA but I direct that the representative of IFCI should be the Chairman of the said Sale Committee and the sale proclamation and advertisement be issued in his name as that is likely to fetch better price than if the sale advertisement is issued in the name of OL. The Members of the said Sale Committee will not be entitled to claim and get any remuneration for attending or participating the proceedings of the said committee. In the said sale advertisement/proclamation usual terms for sale be mentioned along with one additional condition that the quantity and quality mentioned in the advertisement are approximate and the purchaser will not be entitled to raise any dispute or whatsoever claim as regards either quantity or quality of the property subsequent to the sale. In the Misc.Application No. 6/92, IFCI to spend the money for advertisement/sale proclamation and incidental expenses. In view of allowing sale in Misc.Application No.6/92 the Company Application No. 115/92 is rejected.

25. In Misc. Application No. 31/95 it is directed that the property of the Nutan Mills Ltd. should be sold through the Sale Committee consisted of OL and representatives of five secured creditors mentioned in the said application and representative of TLA but the Chairman of the said Sale Committee should be the representative of IRBI and the proclamation/advertisement should be issued in his name. Secured creditors are at liberty to nominate anybody on their behalf to the sale Committee. In Misc. Application No. 31/95 IRBI to spend the money for advertisement/sale proclamation and incidental expenses.

26. In Company Application No. 210/96 and Misc. Application No. 37/91 it is directed that the property of the Nutan Mills Ltd. should be sold through the Sale Committee consisted of OL and representatives of five secured creditors mentioned in the said application and representative of TLA but the Chairman of the said Sale Committee should be the representative of IRBI and the proclamation/advertisement should be issued in his name. Secured creditors are at liberty to nominate anybody on their behalf to the sale Committee. In Misc. Application No. 37/91 IRBI to spend the money for advertisement/sale proclamation and incidental expenses. In view of allowing Misc. Application No. 37/91 the Company Application No. 201/96 is rejected.

27. In Misc. Application No. 38/91 it is directed that the property of the Nutan Mills Ltd. should be sold through the Sale Committee consisted of OL and representatives of five secured creditors mentioned in the said application and representative of TLA but the Chairman of the said Sale Committee should be the representative of IRBI and the proclamation/advertisement should be issued in his name. Secured creditors are at liberty to nominate anybody on their behalf to the sale Committee. In Misc. Application no. 38/91 IRBI to spend the money for advertisement/sale proclamation and incidental expenses. In view of allowing Misc. Application No. 38/91 the Company Application Nos. 202/96 and 203/96 are rejected.

With the above directions all the applications are disposed of. No order as to costs.

(S.D.Pandit.J)